

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TOWAKI KOMATSU,

Plaintiff,

- against -

THE CITY OF NEW YORK, *et al.*,

Defendants.
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20-CV-10942 (VEC) (RWL)

ORDER

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 10/19/2021

ROBERT W. LEHRBURGER, United States Magistrate Judge.

This Order resolves Defendants' application at Dkt. 139, which requests the Court to order that (1) Plaintiff file a second amended complaint naming the John and Jane Doe defendants by November 13, 2021, (2) Defendants respond to the amended pleading by December 13, 2021, and (3) if Plaintiff fails to file the requisite amended pleading, Defendants may respond to the currently operative amended complaint as to the defendants named in that pleading. Defendants' application is GRANTED.

On April 14, 2021, Judge Caproni ordered that within 30 days of Plaintiff's receipt of identification by the NYC Law Department of John and Jane Doe defendants, Plaintiff "must file a second amended complaint naming the John and Jane Doe defendants." (Dkt. 18 at 4.) The NYC Law Department complied with the April 14, 2021 order by identifying the John and Jane Doe defendants on September 13, 2021. (Dkt. 122.) Plaintiff thus was required to file no later than October 13, 2021, a second amended complaint naming the newly identified defendants. Plaintiff did not do so, thereby violating the April 14, 2021 order.

Plaintiff argues that he should not be required to file a second amended complaint until he obtains discovery of photographs, video footage, and communications. (Dkt. 141.) That argument is frivolous. Discovery has not yet commenced. And if Plaintiff believed he could not file the second amended complaint without the discovery he seeks, he should have sought reconsideration of the Court's April 14, 2021 order on that basis, which he did not do.

Accordingly, it is hereby ordered that Plaintiff must file a second amended complaint naming the newly identified defendants no later than November 13, 2021. Defendants shall respond to the second amended complaint by December 13, 2021. If Plaintiff does not file the requisite second amended complaint, the first amended complaint will remain the operative complaint to which Defendants shall respond.

Plaintiff's request for an order compelling the City of New York "to make absolutely certain all relevant evidence that is in its possession and that of its personnel for this case" is preserved. (Dkt. 141.) All parties already are under the obligation to preserve relevant evidence. No additional order is required; accordingly, the request is denied as moot.

SO ORDERED.



ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: October 19, 2021
New York, New York

Copies transmitted this date to all counsel of record. The Clerk of Court is respectfully requested to mail a copy of this order to the pro se Plaintiff.